



FEDERAL ELECTION COMMISSION  
WASHINGTON, D C 20463

VIA FIRST CLASS MAIL

DEC 22 2004

James D. Wareham, Esq.  
Paul, Hastings, Janofsky & Walker LLP  
1299 Pennsylvania Avenue, NW, 10<sup>th</sup> Floor  
Washington, DC 20004-2400

RE: MUR 5628  
AMEC Construction Management, Inc.

Dear Mr. Wareham:

On December 15, 2004, the Federal Election Commission found that there is reason to believe your client, AMEC Construction Management, Inc., knowingly and willfully violated 2 U.S.C. §§ 441b(a), 441c, and 441f, provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"). These findings were based upon information contained in your submissions (dated October 1, 2003; January 28, 2004; and April 26, 2004) and ascertained in the normal course of carrying out the Commission's supervisory responsibilities. *See* 2 U.S.C. § 437g(a)(2). The Factual and Legal Analysis, which more fully explains the Commission's findings, is attached for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 15 days of your receipt of this letter. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

Please note that your client has a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. *See* 18 U.S.C. § 1519.

In order to expedite the resolution of this matter, the Commission has also decided to offer to enter into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe. Enclosed is a conciliation agreement that the Commission has approved.

If you are interested in expediting the resolution of this matter by pursuing pre-probable cause conciliation, and if you agree with the provisions of the enclosed agreement, please sign and return the agreement, along with the civil penalty, to the Commission. In light of the fact

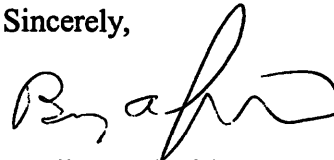
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that conciliation negotiations, prior to a finding of probable cause to believe, are limited to a maximum of 30 days, you should respond to this notification as soon as possible.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public. If you have any questions, please contact Mark Goodin, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

A handwritten signature in black ink, appearing to read "Bradley A. Smith", written in a cursive style.

Bradley A. Smith  
Chairman

Enclosures  
Factual and Legal Analysis  
Conciliation Agreement

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1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

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4  
5 MUR: 5628

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7 RESPONDENT: AMEC Construction Management, Inc.  
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10 **I. INTRODUCTION**

11 Through its counsel, AMEC Construction Management, Inc. ("AMEC") and AMEC plc  
12 (AMEC's ultimate corporate parent) made a voluntary submission notifying the Commission that  
13 AMEC appeared to have violated the Federal Election Campaign Act of 1971, as amended (the  
14 "Act")<sup>1</sup> by reimbursing approximately \$17,000 of its employees' contributions to federal election  
15 campaigns from at least 1998 to 2000. The submission detailed contributions to federal  
16 candidates since October 1998, made by executives and reimbursed by AMEC using general  
17 treasury funds.

18 AMEC, formerly known as Morse Diesel International, Inc. ("Morse Diesel"), provides  
19 construction management services for large construction projects within the United States.  
20 AMEC's ultimate parent company (AMEC plc) initially acquired an interest in Morse Diesel in  
21 1990. AMEC plc acquired the remaining interest in Morse Diesel in 1995, and operated the  
22 company under that name until it changed it to AMEC in 2001.

<sup>1</sup> All of the facts relevant to this matter occurred prior to November 6, 2002, the effective date of the Bipartisan Campaign Reform Act of 2002 ("BCRA"), Pub. L. 107-155, 116 Stat. 81 (2002). Therefore, unless specifically noted to the contrary, all references to statutes and regulations in this report pertain to those that were in effect prior to the implementation of BCRA.

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1 In October 2003, AMEC and AMEC's ultimate parent company (AMEC plc) revealed to  
2 the Commission the existence of a program by which AMEC reimbursed certain employees for  
3 making contributions to federal election campaigns. Beginning as early as the late 1980's, the  
4 company allegedly made such reimbursements through its expense account system. Later,  
5 assertedly after receiving advice from a tax advisor at the firm KPMG, AMEC made these  
6 reimbursements by paying special bonuses through its payroll system. According to AMEC, its  
7 then-CEO (John Cavanagh) and/or its then-CFO (Norman Fornella) determined which  
8 contributions to make and which employees would make them. Mr. Fornella then allegedly  
9 instructed the selected employee to make a particular political contribution and instructed an  
10 accounting department supervisor (Joseph Mandile) to pay a "grossed up" bonus to that  
11 employee. As a result, the employee's net bonus, after taxes, equaled the amount of the  
12 contribution at issue.

13 AMEC asserts that six employees were involved in AMEC's corporate reimbursement  
14 scheme. These employees included:(1) John Cavanagh (CEO in the 1990s); (2) Norman Fornella  
15 (CFO); (3) John Babieracki (Senior Vice President); (4) Mitchell Becker (CEO from 2000-03);  
16 (5) Joseph Mandile (held various mid and upper level positions in the accounting department);  
17 and (6) Lawrence Capelli (held various mid and upper level positions). Furthermore, all of these  
18 employees, except for Mr. Mandile, admitted receiving at least one reimbursement for federal  
19 election contributions through AMEC's payroll bonus scheme.

20 AMEC claims that, because the company did not keep any written records linking a  
21 specific bonus to a particular contribution, it used several methods to determine which employee  
22 contributions may have been reimbursed with corporate funds. First, AMEC explains that its

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1 payroll records allegedly indicate when bonuses were paid, but “do not always match precisely to  
2 the dates or amounts of contributions made by specific employees.” Accordingly, AMEC asserts  
3 that it reviewed payroll records, examined political contribution records available on public  
4 websites, and interviewed “[e]very current or former employee potentially involved” in the  
5 reimbursement scheme. After conducting an internal investigation, AMEC states that it took  
6 remedial action, including firing or demoting those current employees whom it found to have  
7 been involved in those practices. AMEC also claims that it promulgated a company policy  
8 concerning political contributions and “[i]mplemented training to ensure that no future  
9 reimbursement activity occurs.”

## 10 **II. ANALYSIS**

11 Corporations are prohibited from making contributions or expenditures from their general  
12 treasury funds in connection with any election of any candidate for federal office.

13 2 U.S.C. § 441b(a). The Act also prohibits corporations (included among other “persons”) from  
14 making “a contribution in the name of another person....” 2 U.S.C. § 441f; *see* 2 U.S.C.  
15 § 431(11) (“person” includes “corporation”). AMEC acknowledges that it used corporate funds  
16 to reimburse various employees for contributions that they made to federal election campaigns.  
17 It therefore admits to violations of 2 U.S.C. §§ 441b and 441f.

18 The Act also makes it unlawful for a federal contractor “directly or indirectly to make any  
19 contribution ... to any political party, committee, or candidate for public office....” 2 U.S.C.  
20 § 441c(a)(1). This prohibition extends from the commencement of the contract negotiations until  
21 the completion of the contract performance (or the termination of negotiations). 11 C.F.R.  
22 §§ 115.2(b) and 115.1(b). It appears that AMEC qualified as a federal contractor during the time

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1 that it reimbursed employees for contributions made to federal candidates (from the mid-1990s to  
2 2000). According to information released by AMEC's ultimate parent company, AMEC  
3 (operating then as Morse Diesel) entered into contracts with the United States General Services  
4 Administration "in the mid 1990s." See [http://investors.amec.com/amec/rns/](http://investors.amec.com/amec/rns/?id=1039071860nRNSE6907E)  
5 [?id=1039071860nRNSE6907E](http://investors.amec.com/amec/rns/?id=1039071860nRNSE6907E) (visited Sept. 8, 2004). Therefore, this contribution  
6 reimbursement scheme also implicates Section 441c.

7 The actions of AMEC appear to constitute knowing and willful conduct under the Act.  
8 See 2 U.S.C. § 437g(a)(5)(B); *United States v. Hopkins*, 916 F.2d 207, 214 (5<sup>th</sup> Cir. 1990) (under  
9 18 U.S.C. § 1001, "knowing and willful" false representation proven where defendant acted  
10 "deliberately and with knowledge that the representation was false"); *United States v. Whab*, 355  
11 F.3d 155, 162 (2d Cir. 2004) (no "plain error" in district court's jury instruction that the term  
12 "willfully" requires only a criminal defendant's "aware[ness] of the generally unlawful nature of  
13 his conduct").<sup>2</sup> One may draw an inference of a knowing and willful act "from the defendants'  
14 elaborate scheme for disguising" their actions. *Hopkins*, 916 F.2d at 214-15. The *Hopkins* case  
15 involved a program of corporate reimbursements for employees' political contributions. The  
16 defendants (who were officers or directors of savings and loan institutions) "signed forms which  
17 indicated that employees were receiving pay raises because their status had changed when in fact  
18 the employees received pay raises only so that they could contribute" to a political committee.  
19 *Id.* at 213.

<sup>2</sup> By comparison, the District of Columbia Circuit has interpreted the "knowing and willful" standard to require a finding of "defiance or knowing, conscious, and deliberate flaunting [sic] of the Act." *National Right to Work Comm. v. FEC*, 716 F.2d 1401, 1403 (D.C. Cir. 1983) (internal citation omitted) (no "defiance" or "knowing, conscious, and deliberate flaunting" of the Act that would support "knowing and willful" violation of contribution solicitation requirements in light of "ambiguities" of statute and lack of Commission guidance).

1 In the present matter, AMEC admits that it does not have any written records of its  
2 special bonuses to reimburse employees' political contributions (except for computerized payroll  
3 records that simply reflected that a bonus was paid). Moreover, AMEC has not revealed  
4 whether, during the operation of its expense-based reimbursement scheme, its employees openly  
5 claimed that the purposes of their expense submissions were for political contributions. AMEC's  
6 decision to move the reimbursement scheme from its expense account system to its payroll  
7 system makes these reimbursements more difficult to track. The absence of written records  
8 concerning its corporate reimbursements suggests not only that AMEC was aware of the  
9 "generally unlawful nature" of its conduct, but that it created an "elaborate scheme for  
10 disguising" its corporate political contributions. *Whab*, 355 F.3d at 162; *Hopkins*, 916 F.2d at  
11 214-15. AMEC has not explained why it did not simply make corporate contributions directly to  
12 various political committees, which may suggest its knowledge of the unlawful nature of its  
13 conduct. AMEC's conclusory assertion that its conduct was not "knowing and willful," does  
14 nothing to refute the inference of "knowing and willful" activity based on AMEC's hidden  
15 reimbursement scheme. *See Hopkins*, 916 F.2d at 214-15.

16 In conclusion, based on the information provided by AMEC, and other publicly available  
17 information, the Commission finds reason to believe ("RTB") that AMEC knowingly and  
18 willfully violated 2 U.S.C. §§ 441b, 441c, and 441f.

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